

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #6	CCRB Case #: 201601919	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/01/2016 2:20 PM	Location of Incident: Corner of Pinegrove Street and Ferndale Avenue	Precinct: 103	18 Mo. SOL 9/1/2017	EO SOL 9/1/2017	
Date/Time CV Reported Tue, 03/01/2016 3:31 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/07/2016 11:02 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Sinatra	04720	944174	NARCBQS
2. Officers			NARCBQS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Victor Rosario	06261	937436	NARCBQS
2. DT3 Daniel Ludemann	4386	938892	NARCBQS
3. POM Michael Russo	13939	949593	NARCBQS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mark Sinatra	Abuse: Sergeant Mark Sinatra stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B. Officers	Abuse: Officers searched the vehicle in which § 87(2)(b) was an occupant.	
C.SGT Mark Sinatra	Off. Language: Sergeant Mark Sinatra made remarks to § 87(2)(b) based upon his physical disability.	

### Case Summary

On March 1, 2016, § 87(2)(b) filed this complaint via phone with the Internal Affairs Bureau, generating IAB Log No. 16-7355 (BR09). § 87(2)(b) did not witness the incident and solely filed this complaint on behalf of her son, § 87(2)(b) and § 87(2)(b) friend § 87(2)(b).

On March 1, 2016, at approximately 2:20 p.m., Sergeant Mark Sinatra, Detective Victor Rosario, Detective Daniel Ludemann, and Police Officer Michael Russo of Narcotics Borough Queens South allegedly observed § 87(2)(b) commit a traffic violation and proceeded to stop the vehicle in which § 87(2)(b) was driving and § 87(2)(b) was a passenger in (**Allegation A**). Upon the officers' approach to § 87(2)(b)'s vehicle, Sgt. Sinatra and Det. Rosario observed a clear plastic bag containing marijuana in plain view in the center console cup holder. § 87(2)(b) was asked to provide his driver's license and vehicle registration, which he did not possess at the time. In response, the officers directed § 87(2)(b) and § 87(2)(b) to exit the vehicle. Once § 87(2)(b) exited the driver's side door, officers allegedly pushed him against his vehicle and Det. Ludemann handcuffed him. § 87(2)(b) suffered a panic attack and was loudly yelling for help. Det. Ludemann frisked and searched him and officers allegedly pulled § 87(2)(b) to the rear of his vehicle. Simultaneously, officers also frisked and searched § 87(2)(b).

The officers searched inside § 87(2)(b)'s vehicle and recovered one clear plastic bag of marijuana from the center console (**Allegation B**). Sometime thereafter, § 87(2)(b)'s aunt, § 87(2)(b) walked to the incident location from her home several block away. Sgt. Sinatra informed § 87(2)(b) about what had transpired and discussed § 87(2)(b)'s wellbeing due to the fact that § 87(2)(b)'s body was shaking from his panic attack. During their conversation, Sgt. Sinatra allegedly asked § 87(2)(b) if § 87(2)(b) was "retarded" or had mental issues (**Allegation C**).

Once § 87(2)(b) was calm, his handcuffs were removed. Since the officers did not have any summonses in their possession at the time of the incident, Sgt. Sinatra requested for an additional unit to respond to the incident location. After some time, using summonses that were distributed from the responding officers from the 103<sup>rd</sup> Precinct, Det. Rosario issued summonses to § 87(2)(b) and § 87(2)(b) for § 87(2)(b) marijuana (BR01). All of the officers then left the incident location.

Approximately two hours after the incident, § 87(2)(b) sought medical attention at § 87(2)(b) in Queens because his left wrist was swollen and in pain. § 87(2)(b) was diagnosed with a sprain to his left wrist, was given pain medication, and was discharged several hours later (BR32).

There is no video footage of this incident.

### Mediation, Civil and Criminal Histories

- On March 23, 2016, § 87(2)(b) and § 87(2)(b) rejected mediation during their CCRB interviews.
- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of April 8, 2016 with regard to the incident (BR28).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[redacted]  
[redacted]  
[redacted]
- [redacted]  
[redacted]
- [redacted]  
[redacted]  
[redacted]
- [redacted]  
[redacted]  
[redacted]

### **Civilian and Officer CCRB Histories**

- Sgt. Sinatra has been a member of the service for 9 years and has 32 CCRB allegations, 8 of which have been substantiated [§ 87(2)(g)]. In case number 200905650, an offensive language allegation regarding a civilian's race was closed as complainant uncooperative. In case number 201502100, a vehicle stop was exonerated and a vehicle search was unsubstantiated. In case number 201506377, a search of a civilian was unsubstantiated [§ 87(2)(g), § 87(4-b)]. In case number 201506484, a vehicle stop was unsubstantiated while allegations of a vehicle search and refusal to provide name/shield number were substantiated and the Board recommended Command Discipline B. In case number 201506493, a vehicle stop was exonerated while allegations of physical force, vehicle search, property damage, a search of a person, and two allegations of refusal to provide name/shield number were substantiated and the Board recommended charges. In case number 201601551, allegations of a vehicle stop and vehicle search were closed as complainant uncooperative.
  - In case number 201601667, allegations of physical force and other misconduct for providing a false official statement are currently being investigated. In case number 201601680, an entry and search allegation is currently being investigated.
- This is the first complaint filed by [§ 87(2)(b)] and [§ 87(2)(b)] (BR29).

### **Potential Issues**

- [§ 87(2)(g)]  
[redacted] (BR06-BR07).
- [§ 87(2)(g)]  
[redacted]  
[redacted].
- Fieldwork conducted on March 31, 2016 and April 7, 2016 was unsuccessful in obtaining video footage of the incident (BR08 & BR18). However, the Field Team spoke with Spanish-speaking witness [§ 87(2)(b)] and scheduled an in-person interview with him for April 4, 2016 (BR08).
- [§ 87(2)(b)] missed two in-person interviews and did not call ahead to cancel or reschedule. During a phone conversation, [§ 87(2)(b)]'s wife, [§ 87(2)(b)] identified herself as also

having been a witness to the incident. § 87(2)(b) scheduled an in-person interview for April 12, 2016, which she ultimately missed and did not call ahead to cancel or reschedule. During a subsequent phone call on April 13, 2016, § 87(2)(b) stated that she and § 87(2)(b) were inside their home when they observed through their window that two civilians were sitting down on the curb while unmarked police vans and an unknown amount of unidentified officers were standing around the incident location. § 87(2)(g)

- § 87(2)(b) phone statement from April 1, 2016 confirmed that she arrived at the incident location after § 87(2)(b) had been handcuffed and she did not witness when the officers recovered the marijuana. § 87(2)(b) stated that the officers informed her that they recovered a small amount of marijuana from within § 87(2)(b)'s vehicle and confirmed that she spoke to an officer regarding § 87(2)(b)'s mental state. When § 87(2)(b) informed § 87(2)(b) of what the officers recovered in his vehicle, § 87(2)(b) told her, "It was only a little bit in there. I wasn't smoking it." § 87(2)(b) was asked to provide a sworn statement, but stated that she did not want to be involved in the investigation (BR17).

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

Sgt. Sinatra and Det. Rosario corroborated that they observed § 87(2)(b) commit a traffic violation while Det. Ludemann and PO Russo stated that they personally did not observe the traffic violation. § 87(2)(g)

While § 87(2)(b) identified Sgt. Sinatra and PO Russo as having been the officers who searched his vehicle, § 87(2)(b) identified PO Oliver Balena, who was not present during the incident, and Sgt. Sinatra as having done so. Det. Rosario was the only officer who acknowledged searching § 87(2)(b)'s vehicle and stated that Sgt. Sinatra may have assisted him. Although Sgt. Sinatra, Det. Ludemann, and PO Russo acknowledged that the marijuana was recovered from within § 87(2)(b)'s vehicle, they could not remember which officer did so. § 87(2)(g)

In both his sworn testimony and his photo viewing, § 87(2)(b) identified Sgt. Sinatra as the officer who asked his aunt if he was "retarded." Sgt. Sinatra acknowledged that he spoke with § 87(2)(b)'s aunt § 87(2)(g)

#### **Allegations Not Pleaded**

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation A – Abuse of Authority: Sergeant Mark Sinatra stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that § 87(2)(b) and § 87(2)(b) were seated inside § 87(2)(b)'s vehicle when the officers stopped them and that § 87(2)(b) was not summoning for any traffic violations.

§ 87(2)(b) and § 87(2)(b) corroborated that no traffic violations were committed prior to the vehicle stop and that the vehicle was parked in a legal parking space at the incident location while § 87(2)(b) was in the process of retracting his convertible vehicle's top. The ignition of § 87(2)(b)'s vehicle was still on, but the civilians specified that the vehicle was stationary when the officers parked behind their vehicle and initiated the stop.

All of the officers corroborated that § 87(2)(b)'s vehicle was in motion when they initiated the vehicle stop. Sgt. Sinatra observed § 87(2)(b) fail to signal as his vehicle made a left turn while Det. Rosario stated he observed § 87(2)(b)'s vehicle make an improper turn. Neither Det. Ludemann nor PO Russo observed the traffic violation even though they corroborated that it occurred. The officers corroborated that § 87(2)(b) was warned and a summons was not issued for the traffic infraction based upon the officers' discretion.

§ 87(2)(g)

**Allegation B – Abuse of Authority: Officers searched the vehicle in which § 87(2)(b) was an occupant.**

Based on all of the civilians and officers' testimonies, it is undisputed that § 87(2)(b)'s vehicle was searched, marijuana was recovered and vouchered (BR24), and the civilians were issued summonses for § 87(2)(b) (BR01).

§ 87(2)(b) and § 87(2)(b) corroborated that the officers found a small, clear plastic bag inside § 87(2)(b)'s vehicle, but they did not observe from where the officers recovered it. § 87(2)(b) indicated that the recovered bag was empty and he repeatedly denied that the bag belonged to him. Meanwhile, § 87(2)(b) was unable to observe the clear plastic bag completely, but stated that it resembled the baggies used to hold marijuana. § 87(2)(b) also indicated that when the bag was recovered, § 87(2)(b) told the officers that the neighborhood where the incident occurred has "crack heads and all those types of people and that there are bags all over the ground that he could have stepped on and dragged into his car unknowingly." § 87(2)(b) and § 87(2)(b) corroborated that they did not have marijuana in their possession and denied that the plastic bag

belonged to them; however, § 87(2)(b) indicated that § 87(2)(b) did have cigar wraps in his cup holder in the center console of the vehicle at the time of the incident.

Although § 87(2)(b) refused to provide a sworn testimony, her phone statement reveals that the officers informed her that they recovered a small amount of marijuana from within § 87(2)(b)'s vehicle. When § 87(2)(b) told § 87(2)(b) that he was not supposed to smoke and that the officers found something in his vehicle, § 87(2)(b) told her, "It was only a little bit in there. I wasn't smoking it" (BR17).

§ 87(2)(b)'s medical records from the incident date note that § 87(2)(b) is a "current some day smoker" (BR32).

All of the officers are assigned to narcotics enforcement and are trained in detecting marijuana and narcotics. Sgt. Sinatra and Det. Rosario corroborated that they smelled an odor of marijuana coming from § 87(2)(b)'s vehicle upon their approach and observed one small, plastic bag containing marijuana in the center console. Sgt. Sinatra further specified that the observed marijuana bag was inside the center console's cup holder. Det. Ludemann and PO Russo corroborated that they did not smell any odors coming from § 87(2)(b)'s vehicle or having observed the marijuana themselves.

People v. Hurtado, 113 A.D.3d 411 (2014) held that when the police detected an odor of marijuana and observed marijuana in plain view, they had probable cause to arrest the defendant as well as probable cause to believe that the vehicle contained additional marijuana, which under automobile exception, allowed a contemporaneous search of closed containers (BR30). The odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana, with probable cause to search a vehicle and its occupants. People v. Johnson, 901 N.Y.S.2d 909 (2009) (BR31).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation C – Offensive Language: Sergeant Mark Sinatra made remarks to § 87(2)(b) based upon his physical disability.**

It is undisputed that § 87(2)(b) spoke to Sgt. Sinatra about § 87(2)(b)'s mental state during the incident.

§ 87(2)(b) alleged that while Sgt. Sinatra was speaking to § 87(2)(b) Sgt. Sinatra asked her if he had any mental issues or was “retarded.” In response, § 87(2)(b) informed Sgt. Sinatra that § 87(2)(b) had Attention Deficit Hyperactivity Disorder. However, § 87(2)(b) did not corroborate § 87(2)(b)'s allegation whatsoever and only indicated that § 87(2)(b) informed the officers that § 87(2)(b) had severe anxiety. At the beginning of § 87(2)(b)'s phone statement, she stated that § 87(2)(b) has schizophrenia. § 87(2)(b) indicated that when an officer asked her if § 87(2)(b) had any problems, she informed the officer that § 87(2)(b) did have “some problems.” Ultimately, § 87(2)(b) did not corroborate § 87(2)(b)'s allegation that any officers called him “retarded” (BR17).

All of the officers denied calling any of the civilians “retarded” and did not overhear any officer do so as well. All of the officers corroborated that § 87(2)(b) was acting irate and was uncooperative for most of the incident, but Sgt. Sinatra stated that § 87(2)(b) did not seem to have any kind of disability. Det. Rosario indicated that § 87(2)(b) informed Sgt. Sinatra that § 87(2)(b) suffered from Bipolar Disorder while Det. Ludemann and PO Russo did not provide any details regarding Sgt. Sinatra's conversation with § 87(2)(b).

§ 87(2)(g)  
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§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g).

Squad: 6

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date